IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member ofthe Bar of the Supreme Court ofthe State of Delaware:	§ § § § § § §	No. 698, 2013 Board Case No. 2011-0233-B
JOHN J. SULLIVAN, JR., Petitioner.		

Submitted: January 16, 2014
Decided: March 7, 2014

Before **HOLLAND, JACOBS** and **RIDGELY,** Justices.

ORDER

This 7tll day of March, 2014, it appears to the Court that the Board on Professional Responsibility has filed a Report on this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. The Office of Disciplinary Counsel filed no objections to the Board's Report. The Respondent did file objections to the Board's Report. The Court has reviewed the matter pursuant to Rule 9(e) of the Delaware Lawyers' Rules of Disciplinary Procedure and approves the Board's Report.

NOW, THEREFORE, IT IS ORDERED that the Report filed by the Board on Professional Responsibility on December 27, 2013 (copy attached) is hereby APPROVED and ADOPTED. The Respondent is hereby disbarred effective immediately.

BY THE COURT:

Is! Henry duPont Ridgely
Justice

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member of the Bar of The Supreme Court of Delaware	)	CONFIDENTIAL
JOHN J. SULLIVAN, JR.	)	
Respondent.	)	Board Case No. 2011-0233-B

BOARD REPORT AND RECOMMENDATION

This is the report of the Board on Professional Responsibility of the Supreme Court of the State of Delaware (the "Board") setting forth its findings and recommendations in the above captioned matter.

The members of panel of the Board (the "Panel") are Wayne J. Carey, Esquire, Yvonne Anders Gordon, Ed.D. and Lisa A. Schmidt, Esquire (the "Chairperson"). The Office of Disciplinary Counsel (the "ODC") was represented by Patricia Bartley Schwartz, Esquire. The Respondent John J. Sullivan, Jr. (the "Respondent") appeared on his own behalf.

I. PROCEDURAL BACKGROUND.

On January 14, 2013 the ODC filed a Petition for Discipline. Respondent filed an answer on February 1, 2013. The ODC filed an Amended Petition on April 23, 2013 and a Second Amended Petition on May 9, 2013 (references to the "Petition" herein are to the Second Amended Petition). Respondent answered the Amended Petition on April 23, 2013 (references to the "Answer" will be to the Answer to the Amended Petition). [1]

[1] The second Amended Petition was presented to the Panel at the May 9 Hearing to correct certain errors and changes intended to be addressed in the Amended Petition. The Respondent did not object and the changes did not require further answer by the Respondent. (Transcript of the May 9, 2013 Hearing ("May 9 Tr.") at 2-3, 143).

A telephonic pre-hearing conference was held on May 3, 2013. The Panel conducted a hearing on liability on May 9, 2013 (the "May 9 Hearing). [2] The parties provided the Panel with a Stipulation of Admitted Facts ("Admitted Facts"). At the May 9 Hearing, the Panel heard testimony from 4 witnesses; Ed Tarlov, Roseanne Goldberg,[3] Respondent and Sheila Pacheco. In addition, ODC Exhibits 6 through 27 were admitted into evidence. (May 9 Tr. 4) At the conclusion of the May 9 Hearing, the ODC presented an oral closing argument. On June 20, 2013, the Respondent submitted a written closing argument. On July 11, 2013 the ODC submitted a response the Respondent's closing argument.

On August 7, 2013 the Panel notified the ODC and the Respondent that it planned to recommend to the Delaware Supreme Court that the Respondent violated Delaware Rules of Professional Conduct 4.l(a), 4.l(b), 5.3, 8.4(b), 8.4(c), 8.4(d) and l.l5(a), as alleged in the Petition. On September 11, 2013 the Board reconvened to hear testimony and argument relating to sanctions (the "September II Hearing"). · At the September 11 Hearing, the Panel heard testimony from: Kenya Smith, Gloria Henry, Montgomery Boyer, William Cheesman, Sherry

[2] A motion was made by the ODC to consolidate this matter with Board Case No. 2011-0234-B which shares common questions of law and fact. The respondents, in both this case and Case No. 2011-0234B did not object to consolidation. After consideration of the request, the Chair of the Board on Professional Responsibility denied the request noting: "based upon the lack of detailed information about the evidence and positions and defenses contemplated, I feel compelled to err on the side of caution and deny the motion." (Letter dated January 29, 2013). For the sake of economy, it was later determined, with the concurrence of the Chairperson of the Board, that the same Panel of the Board would hear both matters.. Despite having several weeks of notice that the same panel would hear both matters, Respondent raised, for the first time at the May 9 Hearing, an objection to having the same Panel hear both matters. The Panel overruled the objection on the basis that the matters would be decided on two completely separate records and each would be decided on the record presented in the individual matter.

[3] By agreement of the parties the testimony of Mr. Tarlov was presented by transcript from the hearing in Board Case No. 2011-0234-B and the testimony of Ms. Goldberg via deposition transcript (references to transcript testimony are to "Tarlov _"or "Goldberg_").

Hoffman, John Williams, Christopher McBride, Stephen Dalecki, Mary Kathleen Glenn[4] and Respondent, followed by closing argwnents. Exhibits 6-27(h) and (i), 29 and 30 were admitted into evidence.

II. ALLEGATIONS IN THE PETITION FOR DISCIPLINE.

The Petition alleges that Respondent violated Delaware Lawyers' Rules of Professional Conduct ("Ru1es") 4.l(a), 4.l(b), 5.3, 8.4(b), 8.4(c) and 8.4(d) in connection with residential real estate closings Respondent conducted between 2006 and 2008. ·Respondent is alleged to have certified that the representations contained in Department of Housing and Urban Development Settlement Statements ("HUD-1 Statement") were a true and accurate account of the transaction when in fact they were not. Specifically, the Petition charges that either the buyers did not bring the financial contribution set forth on the HUD-1 Statement and/or the proceeds from the transaction were disbursed in amounts that differed from those set forth on the HUD-1 Statement. The Petition alleges that the false certifications constitute violations ofRu1es 4.l(a), 4.l(b), 8.4(b), 8.4(c) and 8.4(d). The Petition further alleges that Respondent failed to ensure that the paralegals, who assisted him in connection with the closings, prepared checks for the disbursement of proceeds as set forth on the HUD-1 Statement in violation ofRu1e 5.3 relating to the supervision of non-lawyer staff. Finally, the Petition charges Respondent with violating Rule 1.15(a) for using his firm's client trust account to fund all or part of the buyer's contribution.

[4] The testimony of Mr. Dalecki and Ms. Glenn was presented by transcript from the criminal trial of Mr. Jamaar Manlove The Panel considered only the non-hearsay aspects of this testhnony. Respondent objected to other transcript testimony found at Exs. 28, 31 and 32 on the basis that he did not have an opportunity to cross-examine the witnesses. The Panel sustains the objection. Exhibits 28, 31 and 32 are not admitted into the record.

III. FACTUAL FINDINGS.

A. Admitted Facts.

Respondent is a member of the Bar of the Supreme Court of Delaware. He was admitted to the Bar in 1984. At all times relevant to this matter, Respondent was engaged in the private practice of Jaw with the frrm Sanclemente & Associates, LLC (the "Sanclemente Firm"). Respondent is still presently engaged in the private practice of Jaw in Delaware but not with the Sanclemente Finn. (Petition and Answer 1 and 2, Admitted Facts1, May 9 Tr. 44-46).

From 2006 through 2008, Respondent as the closing attorney for the following real estate closings, represented the borrower:

Phyllis Graham 405 Llangollen Blvd. New Castle, DE	405 Llangollen Blvd. Closing	Ex.6	10/30/08
Patricia Singleton 713 E. 7th Street Wilmington, DE	713 E. 7th Street Closing	Ex. 7	8/29/08
Lee Price & Tony Coleman 15 Cherry Road New Castle, DE	15 Cherry Road Closing	Ex. 8	8/20/08
GloriaHemy 29 Dallas Road Closing New Castle, DE	29 Dallas Road Closing	Ex.9	7/18/08
Evelyn Anderson Closing 123 Stroud Street Wilmington, DE	123 Stroud Street	Ex. 10	6/19/08
Charles & Jamie Holmes 411 Jefferson Street Wilmington, DE	411 Jefferson Street	Ex.ll	4/28/08
Evelyn Anderson 1122 Elm Street Wilmington, DE	1122 Elm Street Closing	Ex.12	4/1/08

Craig Williams 1009 W. Seventh Street Wilmington, DE	1009 W. Seventh Street Closing	Ex.l3	3/12/08
Dwayne & Sheree Manlove 104 Rita Road New Castle, DE	104 Rita Road Closing	Ex. 14	12/27/07
Anna Bennett 729 E. Tenth Street Wilmington, DE	729 E. Tenth Street Closing	Ex. 15	1/24/08
Dwayne & Sheree Manlove 230 Channing Drive Bear, DE	230 Channing Drive Closing	Ex. 16	12/10/07
Larry Manlove 54 University Avenue New Castle, DE	54 University Avenue Closing	Ex. 17	12/3/07
Gary and Lillian Wilson 314 W. 31" Street Wilmington, DE	314 W. 31"Street Closing	Ex. 18	10/23/07
Ramon Leak 2921 N. Broom Street Wilmington, DE	2921 N. Broom Street Closing	Ex. 19	9/12/07
Clifton Coleman 2511 Heald Street Wilmington, DE	2511 Heald Street Closing	Ex. 20	8/30/07
Clifton Coleman 2142 Culver Drive Wilmington, DE	2142 Culver Drive Closing	Ex.21	8/15/07
DerronBowe 214 East 35th Street Wilmington, DE	214 East 35th Street Closing	Ex.22	6/22/07
DerronBowe 107 West 30th Street Wilmington, DE	107 West 30th Street Closing	Ex.23	5/2/07

Kyle Steed 721 Wood Duck Court Middletown, DE	721 Wood Duck Court Closing	Ex.24	1/4/07
Reginald Johnson 417 E. 10th Street Wilmington, DE	417 E. 10th Street Closing	Ex.25	11/20/06
Kyle Steed 133 Sterling Avenue Claymont, DE	133 Sterling Avenue Closing	Ex.26	2/27/07
Theodore Jones 426 Eastlawn Avenue Wilmington, DE·	426 Eastlawn Avenue Closing	Ex.27	2/4/08

Collectively these real estate closings are referred to as the ("Sullivan Closings"). (Admitted Facts ¶ 2, Exs. 6-27, May 9, Tr. 49, 127) (Respondent confirmed at the May 9 Hearing that he conducted the 133 Sterling Avenue Closing), May 9, Tr. 151-154). Non-lawyer assistants would prepare the HUD-1 Statements and the checks for the Sullivan Closings. (Petition and Answer ¶7, Admitted Facts ¶3). The Sanclemente Firm's real estate escrow accounting records show that there were no deposits of funds from the buyers in eighteen of the Sullivan Closings and the buyers' costs were paid by others in nineteen of the twenty-one Sullivan Closings. (Admitted Facts ¶¶ 4, 5). In the Sullivan Closings, funds were not disbursed according to the HUD-1 Statement but were disbursed as reflected in the disbursement statement. (Admitted Facts ¶¶ 6, 7). As such, funds were disbursed to individuals not identified on the HUD-1 Statements. (Admitted Facts ¶8).

B. Factual Findings from May 9 Hearing and Exhibits Admitted into Evidence.

Respondent has admitted facts sufficient to support a recommended finding that Rules 4.1(a), 4.1(b), 8.4(b), 8.4(c) and 8.4(d) were violated. Specifically, Respondent has admitted that (1) he was the closing attorney in the 22 transactions that form the basis for the allegations in the

Petition; (2) that the Sanclemente Firm real estate escrow account records reflect that there were no deposits of fimds from the buyers in 18 of the transactions and the buyers' costs were paid by others in 19 of the transactions; and (3) fimds were not disbursed according to the HUD-1 Statement. The Panel believes that the factual findings described herein confirm that conclusion, support a recommended fmding that Respondent also violated Rules 5.3 and 1.15(a), and assist in determining the appropriate sanction.

1. The Manlove Transac.tions.

While employed by the Sanclemente Firm, Respondent conducted settlements that involved Mr. Jarnaar Manlove, his relatives and associates. (May 9, Tr. 46-49). Respondent became acquainted with Jarnaar Manlove when Manlove was a loan broker with Central Fidelity (May 9, Tr. 46). Jamaar Manlove had two organizations known as Master Builders for Christ ("MBFC") and Vision Builders Christian Center ("VBCC") (May 9, Tr. 46-47). Both organizations were used as fronts for an equity stripping scheme. Manlove, his relatives, friends, MBFC and VBCC received payments from the sale proceeds in many of the Sullivan Closings.[5]

Respondent explained that in the Sullivan Closings, the homeowners were in danger of losing their homes to foreclosure, and Jamaar Manlove would arrange for an investor to purchase the home to help them avoid foreclosure. The seller would remain in the home for a year and then repurchase the home from the buyer. (May 9, Tr. 62). Respondent never asked for any documentation of this purported agreement. (May 9, Tr. 76). Respondent testified that in order to compensate the buyer for the risk and to ensure that they had funds to make their mortgage payments, the seller would pay fimds to the buyer at closing. (May 9, Tr. 62-63). Respondent also explained that funds were paid to MBFC and/or VBCC to be held for the one year period to

[5] In addition Mark Singleton and his entity MDS Enterprise arranged similar transactions and also received sales proceeds. (May 9 Tr. 114-115, Exs. 7, 10, 11, 12, 13 and 16).

enable the buyer to make their mortgage payments (May 9, Tr. 65). In short, the sellers were stripped of any equity they may have had in their homes in the guise of contributions to MBFC, and/or VBCC and/or some other entities.

The following chart shows the extent of the equity that was taken from some of the sellers in the Sullivan Closings:

Seller	Exhibit No.	Amount of Equity Stripped
Norlyn Ritter	6	$34,710.00
Ferris Properties	7	$30,189.00
Mary Glenn	8	$51,430.00
Michael Fisher	11	$41, 456.80
James Moss	13	$13,566.18
Donnell Fisher	16	$34,393.00
Stephen Dalecki	17	$24,906.36
Kenya Smith	18	$21,333.03
Adrienne Spencer	19	$66,727.34
Jamaar Manlove	20	$49,396.44
William Cheesman	21	$26,288.36
Jamaar Manlove	24	$23,073.56
Grace Cuff	25	$51,240.24
Gerald Hackett	27	$96,700.00

Respondent also testified that he initially believed people were contributing to Jamaar Manlove or his church to:

> Thank him for saving their home, for -- to express commitment to his church and things like that, and that they were paying in order -- paying these funds to avoid losing their home at foreclosure.

(May 9, Tr. 74-75). Despite this belief, Respondent did not obtain any documentation indicating that the monies paid to MBFC and VBCC were gifts. (May 9, Tr. 75). Other than going over the entries on the HUD-1 Statement with the parties, Respondent did not question the monies going to the Manlove entities. (May 9, Tr. 81-82).

We find Respondent's position to be disingenuous at best. What was really happening was that the homeowners, who were at risk oflosing their homes to a sheriff's sale because their current cash positions were insufficient to allow them to pay current obligations and to refinance their mortgages, were (without their knowledge) selling their homes and the equity that those homeowners had in their properties was diverted to MBFC and/or VBCC. The poor cash positions of the homeowners/sellers, along with the size of the purported donations to MBFC and VBCC should have alerted Respondent to the nefarious nature of the transactions from day one.

2. Buyers Did Not Make the Cash Contributions Reflected on the HUD-1 Statement.

The buyers in eighteen of the Sullivan Closings did not make any cash contribution (Admitted Facts 4) despite the fact that checks were received by the Sanclemente Firm from many of the buyers for their HUD-1 Statement contribution amolint. *(See, e.g.,* Exs. 11, 12, 14, 16, 22, 25, 27). Those checks were copied and placed in the file to have a record of the buyer contribution but were never deposited. (May 9, Tr. 98, 101) *(see, also,* May 9 Tr. 113, 114, 124-25, 127, 132). Many of these personal checks were in excess of the $10,000 limit under Rule 1.15(k) and, despite a law firm policy that Respondent should not accept personal funds in excess of $2,000. (May 9, Tr. 113). Respondent admitted that in closings that did not involve

Jamaar Manlove or related entities, he would not have accepted large personal checks. (May 9, Tr. 113).

Respondent claimed that he learned "probably sometime in 2007 that the borrowers' checks were no longer being deposited (May 9, Tr. 154), yet in the first of the closings at issue, in November of 2006 (Ex. 25) he collected a personal check from the borrower at closing for $15,000 in violation of Rule 1.15(k) and his fmn's policy.[6] The acceptance of that check certainly suggests he knew it would never be deposited. Respondent never notified the lender that the buyers were not bringing their fmancial contribution as reported on the HUD-1 Statements and in some cases were receiving funds in the transaction because he knew that if the HUD-1 Statements were changed to reflect zero contribution from the borrower "it would have created red flags from the lender." (May 9, Tr. 99, 121).

3. The Sanclemente Firm's Escrow Account Funds were Used to Cover the Buyer's Contribution.

Respondent admitted that in some instances funds due to the seller or a Manlove entity were disbursed instead to the Sanc!emente Finn to meet the buyer's cash contribution. (May 9, Tr. 59-60). This was necessary because funds were being used from the Sanclemente Finn's escrow account to balance or zero out the transaction. The funds to reimburse the Sanclemente Finn's escrow account were taken from proceeds due to another party, either the seller or a Manlove entity. *(See* Exs. 6, 8 and 27; May 9, Tr. 137-141; 193-196). Respondent viewed this as a "zero balance transaction". He testified, "we took the money out of the escrow account and put it right back into the escrow account. (May 9, Tr. 194-195).

[6] Later Respondent testified he could not remember when he leamed that the checks he was collecting were a fiction and were not funds from the buyer. (May 9, Tr. 162-63).

4. Funds were Disbursed to Persons or Entities not Listed on the **HUD-1** Statement

Respondent claimed he was unaware of how the proceeds from the sales were being disbursed because the checks were prepared by a paralegal and given to him in sealed envelopes to disburse. (May 9, Tr. 163). Ms. Pacheco, the former paralegal at the Sanclemente Firm who prepared the documents for closings and "cut the checks for closings" (May 9, Tr. 198) indicated that Jarnaar Manlove would contact Ms. Pacheco directly and have her break down the checks in different ways. (May 9, Tr. 201-202). She indicated there would be no reason for her to tell Respondent about these changes post-closing. (May 9, Tr. 206). Ms. Pacheco testified, however, that when checks were distributed at the closing, the checks would not be placed in envelopes to be handed out by Respondent. (May 9, Tr. 207). Thus, Respondent could see the amounts being disbursed were inconsistent with the HUD-1 Statement.

5. Respondent Becomes Concerned.

Respondent testified that sometime during the period covered by the Sullivan Closings, he became concerned with the transactions involving Mr. Manlove:

> Over time, it became clear that there were substantial amounts of money that were being received by Mr. Manlove, by MBFC, by VBCC, by his relatives, his friends, whomever, and that money that was supposed to be going to the seller wasn't going to the seller, but the seller's funds were being used to meet the buyer's obligation or they were being paid to Mr. Manlove or to his associates.

May 9, Tr. 166). Respondent indicated that he discussed the issue with Mr. Sanclemente and it was decided that they would no longer do transactions for Mr. Manlove. (May 9, Tr. 167). Yet, Respondent admittedly continued for some period of time to conduct Manlove closings. (May 9, Tr. 167). He Claimed to be relying on Mr. Sanclemente's representations that they had no obligation to the seller. (May 9, Tr. 167).

> As long as the seller was an adult and we were going over the settlement statements, that they were voluntarily signing them, and that they knew that they

> weren't getting the funds, or they were getting zero funds, and they were signing voluntarily, weren't questioning it, that satisfied our obligation.

(May 9, Tr. 167).

While Respondent claims it became clear "over time" that large sums were going to Manlove entities, each of the Sullivan Closings followed a similar pattern throughout the two-year period. By way of example in the frrst closing at issue in November 2006, (Ex. 25) the HUD-1 Statement indicates that Reginald Johnson purchased a property from Grace Cuff for a contract price of $88,000.00. (Ex. 25A). According to the HUD-1 Statement, the buyer was to make a cash contribution of$15,200.71. (Ex. 25A). The seller was to receive cash at closing in the amount of$19,700.00. (Ex. 25A). The seller's proceeds were reduced by settlement charges that included a payment of $66,440.95 to MBFC. (Ex. 25A). According to the HUD-1 Statement, there was no mortgage lien on the property and the remaining settlement charges to the buyer were less than $2,000.00. (Ex. 25A). The buyer wrote a personal check for $15,200.71 (Ex. 25C) which was never deposited. (May 9, Tr. 127). Respondent certified the HUD-1 Statement.

The last closing at issue was conducted by Respondent on October 30, 2008. (Ex. 6). The HUD-1 Statement for this closing reflects a $6,900.50 buyer contribution. (Ex. 6A). The buyer wrote a personal check in that amount which was never deposited. (Ex. 6C). Instead, funds due to another party were disbursed to the Sanclemente Firm to meet the buyer's contribution and cover the shortfall in the escrow account. (May 9, Tr. 58-61). The HUD-1 Statement reflects payments to VBCC[7] of $60,500.00 and MBFC of $43,610.68. (Ex. 6A). MBFC received $34,710.00 in part to cover the buyer's contribution. (Ex. 6B, D).

[7] Respondent agreed that the entry on the HUD-1 Statement for "BBCC" was a typographical error and should have been "VBCC". (May 9, Tr. 64).

6. Respondent Contacts the Department of Justice.

The pattern was consistent throughout the period yet it took more than 2 years before Respondent took any steps to remedy the situation. Respondent testified that:

> I carne to realize they were stripping equity from these properties.
>
> And it was at that point when I became aware of the fact that there was equity stripping going on, that's when I contacted the Department of Justice and spoke to Sherry Hoffman there because I was concerned about these transactions.
>
> I carne in. I met with Ms. Hoffman. I went over a number of the transactions with her. We talked about ways to try to remedy the situstion, to try to see if there was a way we could set aside the purchases, to put the homes back in the names of the original sellers. The problem was that the mortgage companies, of course, would not want to release their mortgages unless they were paid. And since Mr. Manlove and his friends and the investors didn't have the money any longer, there wasn't a way to undo the transaction.

(May 9, Tr. 159-60). Respondent indicated that he contacted the Department of Justice after the last closing he conducted related to Jarnaar Manlove. (May 9, Tr. 160-61).

There is some question regarding how Respondent carne to discuss the Manlove closings with Ms. Hoffman. John Williams, Esquire, a Delaware lawyer with a real estate practice, testified that the Hackett brothers came to see him about a real estate transaction involving a home they inherited from their mother. (Sept. 11, Tr. 72-73). Mr. Williams indicated that there was a $79,000 payment that he could not explain and the Hackett brothers received very little in the transaction. (Sept. 11, Tr. 73-74, *see also* Ex. 27). Mr. Williams contacted Respondent who told him that "he felt it was an arm's length transaction and that it involved some kind oflease or something." (Sept. 11, Tr. 74-75). It was after that conversation that Mr. Williams contacted the Department of Justice and went in to meet with Ms. Hoffman. (Sept. 11, Tr. 75-76). Ms. Hoffman testified that she had two meetings with Mr. Sullivan but could not recall who initiated the contact. (Sept. 11, Tr. 66). This testimony raises the question of whether Respondent initiated the contact with Ms. Hoffman.

7. The Lender's Decision to Fund Would Have Been Impacted if the True Facts were Disclosed.

The Sullivan Closings were inconsistent with Respondent's representations to the lenders on the HUD-1 Statement. The funding decisions by the lenders would have been impacted had the HUD-1 Statements been revised to reflect the true nature of the transactions. The ODC presented testimony from Ms. Roseanne Goldberg, Vice President of customer service for Freedom Mortgage, with 25 years of experience in the mortgage industry. (Goldberg 2-3). Ms. Goldberg testified that Freedom Mortgage requires that the HUD-1 Statement be faxed prior to the closing and there should be no changes once it has been approved by Freedom Mortgage. (Goldberg 5-6). Ms. Goldberg indicated that Freedom would want to know if a borrower comes to a closing without funds and if the borrower's contribution is coming out of someone else's settlement disbursement. (Goldberg 8-9). By way of example, Ms. Goldberg reviewed the HUD-1 Statement in Exhibit 14, which reflected a borrower's contribution of $22,466.77. Ms. Goldberg testified that if the borrower did not "come to the table" with money, that would have affected Freedom Mortgage's decision to fund the loan. (Goldberg 20). Similarly, Ms. Goldberg indicated that the fact that the borrower received a $10,000 disbursement at the time of closing would also have affected the decision to fund. (Goldberg 20); *see, also,* Goldberg 22-25 (similar testimony with respect to Exs. 16, 17, 19, and 20). Finally Ms. Goldberg testified that Freedom Mortgage expects the Delaware attorney who is the closing agent for Freedom Mortgage to ensure that the borrower's contribution is collected as reflected on the HUD-1 Statement. (Goldberg 37).

8. Respondent's Conduct was Inconsistent with His Obligation to Lender.

Mr. Tarlov, a member of the Delaware Bar, was called by the ODC to give expert testimony regarding residential real estate matters and the standard of conducting residential real

estate closings in Delaware. (Tarlov 24). Mr. Tarlov has been a member of the Delaware Bar for more than 25 years and has represented the buyer in thousands of residential real estate closings. (Tarlov 23-24). Mr. Tarlov testified that the certification language contained above the lawyer's signature line on the HUD-1 Statement means that the "HUD-1 is an accurate reflection of the transaction" and "every single penny on the HUD is accurate." (Tarlov 44-45). At closing, Mr. Tarlov indicated that he is representing the borrower, but following the lender's instructions. (Tarlov 49-50). If Mr. Tarlov became aware at closing that the buyer was receiving settlement assistance from the seller he would revise the HUD-1 Statement and notify the lender for approval because "the lender approved the HUD and the HUD is a representation that you're putting cash into the transaction" (Tarlov 34; *see also* Tarlov 39 ("I would call the lender"); Tarlov 40-41 ("I am going to obey the lender 100 percent"); Tarlov 43 ("the HUD is being approved by the lender ... so I just want the lender to sign off on my HUD"); Tarlov 60 ("I still would go back to the lender").[8]

IV. STANDARD OF PROOF.

Allegations of professional misconduct set forth in the ODC's Petition must be established by clear and convincing evidence. (Rules of Disciplinary Procedure IS(c)). That burden falls on the ODC. (Rules of Disciplinary Procedure 15(d)).

V. DISCUSSION AND ANALYSIS.

A. Violation of Rules 4.1(a), 4.l(b), 8.4(b), 8.4(c), 8.4(d).

Respondent had admitted and the extensive record confirms that Respondent certified HUD-1 Statements that were not a true and accurate account of the transactions where the HUD-1 Statements indicated: (i) the buyer(s) made a financial contribution to the transaction when in

[8] Mr. Tarlovtestified that if the buyer's contribution as listed on the HUD-1 Statement was coming from a third party and not the seller, he would verify that the funds were not a loan, and he would also notify the lender. (Tarlov 40-42).

fact the buyer(s) made no contributions; (ii) the funds were disbursed in amounts different than the amounts certified on the HUD-1 Statement; and/or (iii) the funds were disbursed to persons or entities not identified in the HUD-1 Statement.

Rule 4.1(a) provides it is professional misconduct for a lawyer, during the course of representing a client, to lmowingly make "a false statement of material fact or law to a third person." Ru1e 4.l(b) provides it is professional misconduct for .a lawyer, during the course of representing a client, to lmowingly "fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudu1ent act by a client." (Delaware Lawyers' Rules of Professional Conduct 4.1(a) and 4.1(b)). The HUD-1 Settlement Statement contains the following certification above the attorney signature line:

> The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

(Tab A of Exhibits 6-27). In the Su1livan Closings funds were not disbursed according to the HUD-1 Statements. (Admitted Facts 6). In addition, Respondent's clients did not provide funds reflected as "cash from borrower" on the HUD-1 Statement. Both Respondent and his client, the borrower, made false statements on the HUD-1 Statement. Respondent's certification of HUD-1 Statements that were not a true and accurate account of the transaction violates Rules 4.1(a) and 4.1(b).

Ru1e 8.4 provides that it is professional misconduct for a lawyer to:

> (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice.

The HUD-1 Settlement Statement contains the following language:

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a :fine or imprisonment. For details see: Title 18 U.S. Code§ 1001 and§ 1010.

(Tab A of Exhibits 16-27) Respondent knowingly executed HUD-1 Statements that contained false statements in violation of 10 U.S.C. § 1010.

Respondent argues that the ODC did not present any evidence that the HUD-1 Settlement Statements were offered or accepted by the Department of Housing and Urban Development or offered to the department "for the purpose of obtaining any extension or renewal or credit, or mortgage insured by such department or for the acceptance, release or substitution of any security or for the purposes of influencing in any way the action of such department" relying on the language of 18 U.S.C § 1010. Respondent did not offer any support for his interpretation of this provision. Instead, Respondent offered HUD-1 statements for federally insured loans that he knew to be false.

Respondent knew that each HUD-1 Statement was approved by the lender and that lenders were relying on the accuracy of the HUD-1 Statements in funding the loans. Respondent conceded that he never notified the lenders that the buyers did not make the :financial contribution listed on the HUD-1 Statements and that the funds were not disbursed as outlined because it would have raised "red flags" and the loans may not have been funded. In fact, copies of the checks collected from the buyer were made for the :file even though Respondent knew the check would never be deposited in the :firm's escrow account. In the Panel's view, Respondent's false statement to lenders to ensure loan funding constituted a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness or :fitness as a lawyer in other respects" under Rule 8.

As a result of these actions, and the facts outlined above, the Panel recommends a :finding that Respondent's action violated Rules 4.1(a), 4.1(b), 8.4(b), 8.4(c) and 8.4(d).

B. Violation of Rule 5.3.

Rule 5.3 states in part that in employing non-lawyer assistants:

> (b) A lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to insure that the person's conduct is compatible with the professional obligations of the lawyer; (c) a lawyer shall be responsible for conduct of such person that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer if: (i) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involves; or. (ti) the lawyer ... has direct supervisory authority over the person, and knows of the conduct at time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(Delaware Lawyers' Rules of Professional Conduct 5.3)

The ODC argues that Respondent violated Rule 5.3 (i) by failing to make reasonable efforts to insure that the non-lawyer staff's conduct was compatible with the professional obligations of a Delaware lawyer and/or (ii) by ratifYing the non-lawyer staff's conduct with respect to the disbursement of the real estate funds contrary to the HUD-1 Statements and/or (iii) by failing to take reasonable remedial action once Respondent had knowledge of the non-lawyer staff's conduct.

While Respondent denied having any managerial authority at the Sanclemente Firm, he did concede that he had supervisory authority over non-lawyer staff and could direct their conduct. For example, Respondent testified that if he needed a document changed during the preparation for closing he could direct non-lawyer staff to make changes. (May 9 Tr. 51). Respondent also conceded that if he needed something to be changed on the HUD-1 Statement or change the amount of a check during a closing he could direct the non-lawyer staff to make the changes needed. (May 9 Tr. 52, 191). Ms. Pacheco confirmed that if Respondent needed to have documentation changed during closing she would make the changes for him. (May 9 Tr. 207-208). Ms. Pacheco conceded that Respondent could direct her conduct to a certain degree. (May 9, Tr. 208).

Respondent took no action to prevent Ms. Pacheco from issuing checks inconsistent with the disbursement amounts listed on the HUD-1 Statement. Respondent knew that the checks received from the buyers in most instances were never cashed but that the legal assistants made photocopies for the file. Respondent also knew that the lenders were not notified of any of these actions. The Panel recommends a finding that Respondent violated Rule 5.3.

C. Violation of Rule 1.15(a).

Rule 1.15(a) requires, in pertinent part, that a lawyer "shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property", and that property of clients or third persons must be appropriately safe guarded. The ODC argues that by using other clients' funds that were in the firm's trust account to fund part or all of the buyer's contribution in certain settlements, Respondent violated Rule I.l5(a).

In three of the Sullivan Closings (Exs. 6, 8, 27), checks were disbursed to the Sanclemente Firm from proceeds from the sale to reimburse the firm's escrow account for the buyer's contribution. (May 9, Tr. 137-41; 193-96). Respondent viewed this as a "zero balance" transaction because they took money out of the escrow account and put it right back into the account. (May 9, Tr. 194-95). The fact that the funds were replaced does not negate the violation of Rule 1.15(a). *See In Re Figliola,* 652 A.2d 10711, 1076 (Del. 1995) (the Court rioted the issue was not whether the funds could be adequately reimbursed, but rather whether the money should have been taken without authorization) (citing *In Re Librizzi,* 569 A.2d 257, 261 (N.J. 1990)). The Panel recommends a finding that Respondent violated Rule 1.15(a).

D. The Panel's Recommendation is Supported by Precedent from Other Jurisdictions.

The Panel's reco=ended findings that Respondent violated Rules 4.1(a), 4.1(b), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a) of the Delaware Lawyers' Rules of Professional Conduct are supported by case law from other jurisdictions involving similar fact patterns. *North Carolina State Bar v. Rose,* 10 DHC 17 Feb. 23, 2011; *Cincinnati Bar Association v. Powers,* 895 N.E.2d 172 (Ohio 2008); and *In Re Barbare,* 602 N.E.2d 382 (S.C. 2004). In *Rose,* there was one real estate transaction at issue. In that transaction Rose prepared a HUD-1 Statement reflecting a buyer contribution of $59,652.31 and a seller disbursement of $50,930.29. The Disciplinary Hearing Co=ission found that the HUD-1 Statement prepared by Rose was false and that the buyer brought no money to the closing and Rose did not disburse funds to the seller. The Commission further found that Rose was responsible for ensuring the HUD-1 Statement accurately recited the receipt and disbursement of funds in the transaction and that the HUD-1 Statement certification was false. The Disciplinary Hearing Commission found that Rose had violated Rules 8.4(b) and 8.4(c) which are identical to the Delaware Ru1es. Respondent argues that this case is distinguishable because Rose represented both the borrower and the lender. Respondent, however, does not address the fact that Rose was also charged with a violation of Rule 8.4(g) involving intentional prejudice to his client, the lender, during the course of the professional relationship.

The ODC also relies on *Cincinnati Bar Association v. Powers,* where the attorney was charged with fabricating closing documents on over 300 loans causing lenders to lose nearly $3.5 million and for filing false income tax returns that concealed his profits. While Respondent did not profit from his actions or file false tax returns, there are some similarities with *Powers.* Mr. Powers knew that the buyer did not bring the down payment but that it was provided by others

and that some of the buyers received funds from the sale proceeds. The Court found that these facts were not disclosed to the lenders and that the HUD-1 Statements were falsely certified. The Court found that Powers violated sections of the Ohio Disciplinary Code of Professional Responsibility which are nearly identical to Delaware Ru1es 8.4(b), (c) and (d).

The ODC also asks the Panel to rely on *In Re Barbare*. Respondent concedes that the *Barbare* case is most similar to this matter. (Respondent's Closing Argument at If 14). ln *Barbare* the Respondent pled guilty to a violation of 18 U.S.C. § 1010 in connection with his false certification of HUD-1 Statements where he certified that borrowers brought funds to closing when in fact no borrower's contribution had been made. In addition, the Respondent in *Barbare* permitted the clients to instruct non-lawyer staff on disbursements which were contrary to the amounts reflected on the HUD-1 Statements. The Court found that the Respondent's conduct violated Rules 4.1, 5.1, 5.3 and 8.4 of the South Carolina Ru1es of Professional Conduct, which are identical to the corresponding Delaware rules.

The Respondent here argues that in *Barbare* the Supreme Court of South Carolina found that there were "red flags" which should have alerted *Barbare* to the criminal activity of third parties in connection with these closings. Respondent argues that he was deceived by Jamaar Manlove in his scheme to defraud the sellers of their homes. The Panel finds that *Barbare* is not distinguishable on those grounds. Moreover, that Respondent was deceived by Manlove is not credible. Respondent never sought documentation of the alleged buy-back agreements between buyer and seller. Respondent took action to hide the fact that buyers were not making the financial contributions as disclosed on the HUD-1 Statements and also because Respondent admittedly continued conducting closings after he testified that he became concerned with the "equity stripping" being conducted. Red flags were everywhere for Respondent to see.

The ODC also relies on *In re Foley*, No. BD-2010-005 (March 24, 2010) and provided a copy of the Petition for Discipline filed with the Connonwealth of Massachusetts Board of Bar Overseers and the Order of Tenn Suspension issued by the Supreme Court of the Connonwealth of Massachusetts. Respondent argues that since neither document includes the findings of either a Board of Professional Responsibility or of the Supreme Court for the Commonwealth of Massachusetts, these documents do not represent appropriate precedent to be considered by the Panel and the Panel agrees.

VI. SANCTIONS.

A. Standard for Imposing Sanctions.

"The objectives of the Lawyer Disciplinary system are to protect the public, to protect the administration of justice, to preserve confidence in the legal profession, and to deter other lawyers from similar misconduct." *In Re McCann,* 894 A.2d 1087, 1088 (Del. 2005); *In Re Fountain,* 878 A.2d 1167, 1173 (Del. 2005) *(quoting In Re Bailey*, 821 A.2d 851, 866 (Del. 2003)). The focus of the lawyer disciplinary system in Delaware is not on the lawyer but, rather, on the damage to the public that is ascertainable from the lawyers' record of professional misconduct. *In Re Hall,* 767 A.2d 197, 201 (Del. 2001). It is the duty of the Panel to recommend the sanction that will promote those objectives.

In reaching its recommendation of an appropriate sanction, the Panel considered the ABA Standards for imposing lawyer sanctions (the "ABA Standards"):

> The ABA framework consists of four key factors to be considered by the Court: (a) the ethical duty violated; (b) the lawyer's mental state; (c) the actual potential injury caused by the lawyer's misconduct; and (d) aggravating and mitigating factors.

ABA Standards for Imposing Lawyer Sanctions, at 9 (1992) (the "ABA Standards"), available at http://www.abanet.org/cpr/regulationlstandards_sanctions.pdf.

B. Application of the Standard.

1. The Ethical Duties Violated by Respondent.

As set forth above, the Panel recommends a finding that Respondent violated Rules 4.1(a), 4.1(b), 5.3, 8.4(b), 8.4(c), 8.4(d) and l.lS(a) of the Delaware Lawyers' Rules of Professional Conduct.

2. Respondent's Mental State.

The Panel must determine the Respondent's mental state in order to determine the level of culpability. The ABA Standards defme the most culpable mental state as that of "intent" when the lawyer acts with purpose to accomplish a particular result. A less culpable mental state is that of "knowledge" where the lawyer is consciously aware of the attendant circumstances of his or her conduct but without the objective or purpose to accomplish a particular result. The least culpable mental state is negligence where the lawyer deviates from the standard of care that a reasonable lawyer would exercise in a given situation. (ABA Standards at 6-7). Based on the factual findings described above, the Panel concludes that the Respondent's mental state was intentional. Respondent acted with the intent offacilitating 22 real estate closings that defrauded those who relied on the accuracy of the HUD-1 Statements.

C. Injury Caused by Respondent's Misconduct.

Pursuant to the ABA Standards, the Panel must consider the potential or actual injury caused by the Respondent's action. (ABA Standards at 6-7). At the September **11** Hearing the ODC presented testimony from several witnesses to address the injury caused by Respondent's actions. Ms. Kenya Smith, Mr. Montgomery Boyer and Mr. William Cheesman were all sellers of properties in the Sullivan Closings.

Ms. Smith testified that the closing for her property took five minutes and she was presented with papers to sign but with no accompanying explanation and was in and out in five

minutes. (Sept. 11, Tr. 12-15). Ms. Smith did not receive any proceeds from the sale of her home and she did not understand that the buyer was receiving funds as a result of the sale. (Sept. 11, Tr. 10-11). Ms. Smith and her children remained in the home paying rent to the buyer for less than six months when they were evicted by the sheriff. (Sept. 11, Tr. 8-9).

The testimony of Mr. Boyer was similar. Mr. Boyer acknowledged that at the closing for his property the lawyer showed him documents which he could not see due to poor vision nor could he understand the substance of the documents. (Sept. 11, Tr. 43-44). Mr. Boyer did not receive any proceeds in the sale and was unaware that the buyers received $10,000.00 and Jan1aar Manlove received $1,700.00. (Sept. 11, Tr. 41). Mr. Boyer further testified that he had no understanding of why MBFC received $34,000 at closing. (Sept. 11, Tr. 48). Mr. Boyer left his home when he could no longer afford the rent the buyers were charging whicli was more than liis prior mortgage. (Sept. 11, Tr. 38-40).

Mr. Cheesman also testified that he was only in Respondent's office for 10 or 15 minutes for his closing and did not recall Respondent going over the HUD-1 Statement. (Sept. 11, Tr. 51-52, 56). Mr. Cheesman received no funds at closing. (Sept. 11, Tr. 53). He also had no understanding that he was making donations to an entity called MMBK and VBCC of more than $57,000 combined. (Sept. 11, Tr. 53-54). No one explained that he was also contributing $4,800 for closing costs. (Sept. 11, Tr. 57). Mr. Cheesman rented his home back from the buyer until it was put up for sheriff's sale. (Sept. 11, Tr. 55-56).

The ODC also presented the testimony of Gloria Henry. Respondent represented Gloria Henry who was the borrower in the 29 Dallas Road Closing. (Ex. 9). The HUD-1 Statement for this closing indicates that the borrower was making a cash contribution of $7,636.35 toward the $90,000 purchase price which Respondent admitted was not received. (May 9, Tr. 111). The

HUD-1 Statement also shows payments to VBCC and MBFC of $16,700 and $5,000 respectively. (Ex. 9A). Ms. Henry testified that she did not understand that she was purchasing a home but instead thought that she was co-signing a loan for her nephew. (Sept. 11, Tr. 25, 28). She testified that she remembered signing the papers but did not understand them because she could not read well and no one went over the papers she was asked to sign. (Sept. 11, Tr. 27, 32-33). Ms. Henry indicated that prior to the transaction she had excellent credit which was impacted negatively by the transaction and she can no longer make purchases on credit. (Sept. 11, Tr. 30).

The ODC also offered the testimony of Christopher McBride, the real estate coordinator for the New Castle County Sheriffs Office. (Sept. 11, Tr. 89). Mr. McBride explained the sheriffs sale process and testified regarding 13 properties that were sold in the transactions at issue which were sold at sheriffs sale. (Sept. 11, Tr. 101-119). Mr. McBride explained that when the loans were not repaid and the properties were sold, Fannie Mae and Freddie Mac who guaranteed the loans took a loss on the properties. (Sept. 11, Tr. 38).

D. The Existence of Any Aggravating and Mitigatillg Circumstances.

The Panel considered whether there were any aggregating or mitigating circumstances which would warrant an increase or a decrease in the sanction.

ABA Standard9.22 sets forth the following aggravating factors:

(a) Prior disciplinary offenses;

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) submission of false evidence, false statement or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of the victims;

(i) substantial experience at the practice of law;

G) indifference to making restitution;

(k) illegal conduct, including that involving the use of controlled substances.

Based on the evidence presented, the Panel finds the following aggravating factors:

Respondent has a prior disciplinary record. (ABA Standard § 9.22(a)). Respondent testified that he did have a prior disciplinary history. (Sept. 11 Tr. 144-45). In 1999 he was suspended from the practice oflaw for eighteen months for violations of Rule 8.4(c)[9]. In 1996 he received a private probation for violation of Rule 1.4 and in 1995 he received a private admonition for violation of Rules 1.3 and 1.7.

Respondent has engaged in a pattern of misconduct. (ABA Standard § 9.22(c)). The evidence demonstrates that Respondent's misconduct occurred over a period of approximately two years and involved twenty-two separate real estate transactions.

Respondent's misconduct consists of multiples offenses. (ABA Standard§ 9.22(d)). The Panel has recommended a fmding that Respondent violated Rules 4.l(a), 4.1(b), 5.3, 8.4(b), 8.4(c), 8.4(d) and 1.15(a).

The evidence presented at the September 11 hearing demonstrated that the victims of Respondent's misconduct were vulnerable.

[9] 757 A.2d 832 (Del. 1999).

Respondent has been a member of the Delaware Bar since 1984 and has substantial experience in the practice of law.

Lastly, although Respondent was not charged criminally, he falsely certified HUD-1 Statements which is a crime under 18 U.S.C. 1010.

I. Mitigating Factors.

ABA Standard§ 9.32 sets forth the following mitigating factors:

(a) Absence of a prior disciplinary record;

(b) Absence of a dishonest or selfish motive;

(c) Personal or emotional problems;

(d) Timely good faith effort to make restitution or to rectify consequences of misconduct.

(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(f) inexperience in the practice oflaw;

(g) character or reputation;

(h) physical disability;

(i) mental disability or chemical dependency including alcoholism or drug abuse when:

(1) there is medical evidence that Respondent is affected by a chemical dependency or mental disability;

(2) the chemical dependency or mental disability caused the misconduct;

(3) Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

(j) delay in disciplinary proceedings;

(k) interim rehabilitation;

(1) imposition of other penalties or sanctions;

(m) remorse; and

(n) remoteness of prior offenses.

Based on the evidence presented the Panel finds the following mitigating factors:

Respondent made full and free disclosure to the disciplinary board and had a cooperative attitude toward the proceedings.

Respondent did not have a selfish motive only to the extent that he did not personally profit from the transactions except from the legal fees earned for his employer in connection with the closings.

VII. THE PANEL'S RECOMMENDED DISCIPLINE.

The ODC argues that disbarment is the appropriate sanction. Respondent asks the Panel to recommend a substantial suspension. The ODC relies on several cases in support of its request that Respondent be disbarred. First, the ODC relies on *In re Freebery,* 947 A.2d 1121, 2008 WL 1849916 (Del. 2008). There, Ms. Freebery failed to disclose a loan on a personal mortgage application and pled guilty to a violation of 18 U.S.C. § 1014, a felony criminal offense. Ms. Freebery stipulated to a violation of Rule 8.4(b). The Panel in Freebery analyzed

whether the mental state that formed the basis for her conviction was "knowing " or "intentional"

As the Panel explained:

> This distinction is critical, since the recommendations suggested by the ABA Standards are based on the mental state that forms the basis of an attorney's misconduct-i.e., more culpable mental states generally receive more severe sanctions. Specifically, under the ABA Standards, "knowledge" is defined as "the conscious awareness of the nature or attendant circumstances of the conduct *but without the conscious objective or purpose to accomplish a particular result."* ABA Standards Definitions (emphasis added) Given the language of 18 U.S.C. § 1014, Respondent's contention that her conduct was merely "knowing," and not "intentional," is misplaced. The federal statute under which Respondent was convicted specifically requires that Respondent's false statement be made "for the purpose of influencing ... any institution the accounts of which are insured by the Federal Deposit Insurance Corporation." Her guilty plea establishes this wrongful conduct. Respondent purposely omitted her $2.3 miiiion liability to ensure Commerce Bank's expeditious approval of her loan application. While Respondent may not have sought to defraud Commerce Bank, she did intend to have Commerce Bank rely on the erroneous application in granting a mortgage on her new home with favorable terms. Accordingly, her mental state cannot fall within the ABA Standard's definition of "knowledge", which excludes "the conscious objective or purpose to accomplish a particular result." Rather, the statute, on its face, requires purposeful influencing of a financial institution, a mental state the Panel considers in the context of this disciplinary proceeding to be substantially equivalent to intentional.

In re Freebery, 2008 WL 1849916, *5 (Del. Supr.) In adopting the Panel's Report in *Freebery,* the Court agreed that disbarment was the appropriate sanction for the conduct that led to a felony conviction and a violation of Rule 8.4(b).

Here while Respondent was not convicted of a felony, his conduct violated Section 1010 and implicates the same "intentional" mental state as found in *Freebery,* suggesting a more severe sanction under the ABA Standards. Section 1010 provides:

> Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the

> same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. § 1010. Respondent here admittedly violated 18 U.S.C. § 1010 by certifying HUD-1 Statements that he knew to be false and by failing to cause the funds to be disbursed in accordance with the HUD-1 Statements. He did not change the HUD-1 Statements to reflect that borrowers were not making financial contributions because it would have raised "red flags" with the lenders. Respondent intended for the lenders to rely on the HUD-1 Statement he certified. Although Ms. Freebery made false statements on a loan application for her own benefit and pled guilty to a felony, the Panel does not believe a lesser sanction is warranted here even though Respondent did not obtain any personal benefit other than his closing fees. Respondent made misrepresentations on the HUD-1 Statements in 22 transactions over a 2-year period and caused injury to his client, other parties to the transaction and the lenders.

The ODC also presented other cases in support of its recommended sanction. *In re Lassen*, 672 A.2d 988 (Del. 1996) (lawyer suspended for three years for multiple rules violations including 4.l(a), 8.4(b), 8.4(c) and 8.4(d) for falsifying invoices to clients); *In re Fabrizzio*, 498 A.2d 1076 (Del. 1985) (lawyer suspended for two years for violating (now) Rule 8.4(c) for falsifying settlement sheets in connection with one real estate closing); *In re Faraone*, 772 A.2d 1 (1998) (lawyer suspended for six months for violations of Rules 4.(a), 4.l(b) and 8.4(c) for representations made in connection with two real estate transactions); *Cincinnati Bar Assoc. v. Powers*, 895 N.E.2d 172 (Ohio 1008) (lawyer disbarred for multiple rules violations in connection with falsifying closing documents on over 300 loans).[10]

[10] While *Powers* is distinguishable on the basis that the lawyer personally profited from his actions and also falsified federal tax returns to hide his profit, the Panel believes that the

Respondent did not offer any cases in support of his request that the Panel recommend a substantial suspension.

The Panel has considered the extensive factual record summarized above, the ABA Standards, including aggravating and mitigating factors and precedents of the Delaware Supreme Court and recommends disbarment as the appropriate sanction.

Delaware precedents support the recommended sanction and is not relying on *Powers* for that purpose.

Lisa A. Schmidt (Bar No. 3019)

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Wayne J. Carey (Bar No. 2041)

_____

Yvonne Anders Gordon

Dated: December 27, 2013

Lisa A. Schmidt (Bar No. 3019)

Wayne J. Carey (Bar No. 2041)

Yvonne Anders Gordon

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